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6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION
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10 CLAUDIA B. HILARY,

11 Plaintiff,

12 vs.

13 CITY OF POINT ARENA and DOES ONE
THROUGH 20,

14 Defendants.
15

Case No: C 11-5380 SBA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Dkt. 30

16 The parties are presently before the Court on Plaintiff's Motion for Leave to File
17 First Amended Complaint. Dkt. 30. Having read and considered the papers filed in
18 connection with this matter and being fully informed, the Court hereby GRANTS the
19 motion for the reasons set forth below. The Court, in its discretion, finds this matter
20 suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ.
21 L.R. 7-1(b).

22 **I. BACKGROUND**

23 Plaintiff Claudia Hillary was employed by the City of Point Arena ("City") from
24 July 1, 2006 to October 13, 2010. On the evening of October 13, 2010, the City Council
25 voted 3-2 in favor of affirming her release from employment. Two of the members who
26 voted against Plaintiff's release later resigned in November 2010 and April 2011. The
27 other three were recalled on August 30, 2011 following a special election.
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1 On October 12, 2011, Plaintiff filed the instant action against the City in Mendocino
2 County Superior Court. The Complaint alleges a single cause of action for violation of due
3 process, based on the City Council's handling of her employment separation. On
4 November 7, 2011, the City removed the action pursuant to 28 U.S.C. § 1331 on the
5 grounds that Plaintiff's claim is based on federal law.

6 On February 21, 2012, the Court conducted an initial case management conference.
7 In light of the parties' ongoing efforts to resolve the action on their own, the Court, at the
8 parties' suggestion, declined to enter a pretrial schedule. Dkt. 18. At the next case
9 management conference held on April 12, 2012, the parties indicated that the date for their
10 mediation had been continued, and requested that the Court likewise continue the
11 conference. Dkt. 24. After the parties were unable to reach a settlement at the mediation,
12 the Court conducted a further case management conference on May 24, 2012, at which time
13 the Court set June 13, 2012, as the deadline to file a stipulation or motion to amend the
14 pleadings.

15 On June 13, 2012, Plaintiff filed the instant motion for leave to amend, which seeks
16 to add a second and third cause of action for retaliation under 42 U.S.C. § 1983 and 29
17 U.S.C. § 215, respectively. The City opposes the motion on the grounds of undue delay
18 and prejudice. The matter has been fully briefed and is ripe for adjudication.

19 **II. LEGAL STANDARD**

20 Rule 15(a)(2) provides that leave to amend a complaint should be "freely given
21 when justice so requires." Fed. R. Civ. P. 15(a)(2). Rule 15 "is to be applied with extreme
22 liberality." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003).
23 "Four factors are commonly used to determine the propriety of a motion for leave to
24 amend. These are: bad faith, undue delay, prejudice to the opposing party, and futility of
25 amendment." Ditto v. McCurdy, 510 F.3d 1070, 1079 (9th Cir. 2007) (citations and
26 internal quotation marks omitted). Of these factors, prejudice "carries the greatest weight."
27 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). "The party
28 opposing amendment bears the burden of showing prejudice." See DCD Programs, Ltd. v.

1 Leighton, 833 F.2d 183, 187 (9th Cir. 1987). The decision to grant or deny a request for
2 leave to amend rests in the discretion of the trial court. See California v. Neville Chem.
3 Co., 358 F.3d 661, 673 (9th Cir. 2004).

4 **III. DISCUSSION**

5 The City contends, as a threshold matter, that Plaintiff has unnecessarily delayed in
6 seeking leave to amend, since she has known of the facts giving rise to the two proposed
7 claims since she initiated the action on October 12, 2011. The Ninth Circuit has held that
8 “[u]ndue delay by itself . . . is insufficient to justify denying a motion to amend.” Bowles
9 v. Reade, 198 F.3d 752, 757 (9th Cir. 1999). Rather, there must also be a showing of
10 prejudice, bad faith or futility of the amendment. Johnson v. Buckley, 356 F.3d 1067, 1077
11 (9th Cir. 2004).

12 The Court is neither persuaded that Plaintiff has unduly delayed in seeking leave to
13 amend nor that any such delay has unduly prejudiced the City. With regard to the issue of
14 delay, Plaintiff does not dispute that she was aware of the facts giving rise to her proposed
15 claim when she filed suit. Nonetheless, Plaintiff correctly points out that she did not seek
16 leave to amend earlier due to the parties’ ongoing efforts to resolve the dispute without the
17 need for further litigation. Moreover, Plaintiff has consistently made it clear in court filings
18 and during the case management conferences that she would seek leave to amend in the
19 event the case did not settle. See Initial Case Management Statement at 3, filed Feb. 14,
20 2012, Dkt. 17; Second Case Management Statement at 2, filed Mar. 5, 2012, Dkt. 20; Third
21 Case Management Conference Statement at 2, filed May 25, 2012, Dkt. 28. It was only
22 after the parties’ settlement efforts stalled that Plaintiff filed the instant motion.

23 Nor is the Court persuaded by the City’s claim of prejudice. The City attempts to
24 make much of the fact that five of the City Council members involved in Plaintiff’s
25 separation no longer are in office. The City avers that “[g]iven the drastic reorganization of
26 the City Council, Plaintiff’s delay has prejudiced Defendant because the passage of time
27 will have made it increasingly difficult to obtain accurate statements from witnesses
28 pertinent to those events surrounding Plaintiff’s release given the fractious political

1 atmosphere.” Def.’s Opp’n at 5. This assertion of prejudice is unavailing. The City
2 provides no evidence to support its conclusory assertion that it, in fact, will be “difficult” to
3 obtain accurate witness statements. In addition, the City overlooks that the five City
4 Council members left office *before* Plaintiff filed the instant action, meaning that any
5 purported difficulty resulting from the reorganization of the City Council is no different
6 now than when Plaintiff filed the instant action. As such, the City cannot legitimately
7 claim that Plaintiff’s purported delay in seeking leave to amend is unduly prejudicial.

8 **IV. CONCLUSION**

9 For the reasons stated above,

10 IT IS HEREBY ORDERED THAT:

11 1. Plaintiff’s Motion for Leave to File First Amended Complaint is GRANTED.

12 2. Plaintiff shall have two (2) days from the date this Order is filed to file a First
13 Amended Complaint.

14 3. This Order terminates Docket 30.

15 IT IS SO ORDERED.

16 Dated: September 17, 2012


SAUNDRA BROWN ARMSTRONG
United States District Judge